IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 3901 OF 1995.

Mohanrao Jadhav..... .... ..Petitioner
V/s
Sharad Narayan Pawar & Ors.... ... .Respondents.

Mr.A.A.Kumbhakoni, Sr. Adv. With Mr.A.P.Kulkarni, Adv. For the petitioner.

Mr.A.M.Joshi, Adv. For respondent No.1.

Mr.P.B.Deo, Adv. For respondent No.2.

CORAM: A.P.DESHPANDE, J.

1.3.2007.

Oral Judgment:

The petitioner by this petition takes exception to the judgment and order passed by the School Tribunal, Pune dated 15.2.1995 partly allowing the appeal filed by respondent No.1 holding that the promotion granted to the present petitioner as Head Master in Bhikhobha Patil High School is in supersession of respondent No.1's claim to the promotional post.

2. Few facts which are necessary to adjudicate the issue involved in this petition are narrated herein below.

The respondent No.2 school management administers three secondary

schools by name Indira D.Ed. College, Bhikhobha Patil High School and Indira Kanya Prashala. All the three institutions fall within the definition of private schools and the conditions of services of employees working in the said institutions are governed and regulated by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules made thereunder (the "Act"). The petitioner who was trained graduate teacher came to be initially appointed with effect from 9.6.1986 in Indira Kanya Prashala whereas the respondent No.1 who was also a trained graduate teacher at the time of his initial appointment, came to be appointed with effect from 15.7. 1987 in Indira D.Ed. College. Undisputedly prior to the year 1990 employees from one school could be transferred to the other school and hence by an order dated 21.6.1989 the 1st respondent was transferred from Indira D.Ed. College to Bhikhobha Patil High School. On the said transfer of respondent No.1 from Indira D.Ed. College to Bhikhobha Patil High School he was appointed as in-charge Head Master with effect from 24.6.1988. The respondent No.1 came to be transferred from Bhikhobha Patil High School to Indira Kanya Prashala on 10.6.1991 and the petitioner came to be substantively promoted to the post of Head Master of Bhikhobha Patil High School with effect from 25.6.1991. Aggrieved by transfer of respondent No.1 from Bhikhobha Patil High School to India Kanya Prashala respondent No.1 filed an appeal before the School Tribunal contending that the management had taken policy decision on

20.9.1990 by passing a resolution to have a separate seniority list in regard to Indira Kanya Prashala which was girls' school and it was permissible for the management to have taken such a decision having regard to discretion vested in the management by Note 7 of Schedule F of the Rules. Note 7 lays down that it shall be open for the management to resolve with a view to maintain separate seniority list of teacher working in girls' school. However such decision once reached would be irrevocable and cannot be reversed in future. On such seniority list being prepared in regard to teachers working in girls' school inter se transferability of the teachers from the girls' school to other schools and *vice versa* would cease.

3. The respondent No.1 contended before the Tribunal that as the management had taken a decision to maintain separate seniority list of teachers working in girls' school his transfer from the post of in-charge Head Master from Bhikhobha Patil High School to Indira Kanya Prashala is illegal. It was contended that the present petitioner's appointment to the promotional post in Bhikhobha Patil High School is bad in law and that the transfer of respondent No.1 from Bhikhobha Patil High School to Indira Kanya Prashala tantamounts to reduction in rank. All these submissions were based on the main plank that the petitioner could not have been transferred from Bhikhobha Patil High School as he was working in girls' school and the management had resolved to maintain separate seniority list of teacher working in the said school.

4. It will be apt to refer to memo of appeal filed by the respondent No.1 before the Tribunal. The following prayers were made:

"(a) This Hon'ble Court be pleased to set aside/quash the order dated 10th June 1991 issued by respondent No.1-management transferring the appellant with effect from 19th June 1991 as an Assistant Teacher in Indira Kanya Prashala from Bhikoba Patil High School, Chikhali.

(b) The Hon'ble Court be pleased to direct respondent No.1-institution to restore the appellant back to the post of Head Master of Bhikoba Patil High School, Chikhali, with effect from 19th June 1991 and be further pleased to declare that he continues as the Head Master of the said School without any break whatever.

(c) Alternatively, the Hon'ble Court be pleased to direct respondent No.1 to restore the appellant back to the said post of Head Master of Bhikoba Patil High School, Chikhali, by a direction of this Hon'ble Court.

(d) The Hon'ble Court be pleased to direct respondent No.1-institution to pay the appellant difference in emoluments, if any, between that of the post of Head Master Bhikoba Patil High School, Chikhali and that of an Assistant Teacher in Indira Kanya Prashala at masur.

(e) The appellant be awarded costs of this appeal;

(f) Other just and equitable orders be passed in the interest of justice."

It is interesting to note that prayer (a) sought quashing of the order of respondent No.1's transfer from Bhikoba Patil High School to Indira Kanya Prashala. Prayer (b) was incidental relief which sought order of repatriation of respondent from Indira Kanya Prashala to the post of in-charge Head Master in Bhikhobha Patil High School. Prayer (c) is on the same lines and other prayers are in regard to incidental reliefs. There is no prayer made, calling in question the promotion granted to the present petitioner to the post of Head Master in Bhikhobha Patil High School. It was effected on 1.7.1991. At this stage it is pertinent to note that the jurisdiction of the school tribunal under section 9 of the Act is limited jurisdiction. The Tribunal can only try appeals wherein a grievance is made in regard to dismissal, removal, termination, reduction in rank and supersession of the claim while making a promotion. Turning to the prayers made in the memo of appeal the challenge was to an order of transfer transferring respondent No.1 from Bhikhobha Patil High School to Indira Kanya Prashala and the same was asked as substantive relief. It is obvious that the said relief cannot be claimed substantively in an appeal before the Tribunal. A grievance was also made that transfer of respondent No.1 from the post of in-charge Head Master to that of Assistant Teacher amounted to reduction in rank. The same does not in fact amount to reduction in rank, as the Respondent' ssubstantive post was that of Assistant Teacher. Hence the said grievance was also ill founded and the

learned counsel for the respondent concedes to this position. Turning to the main issue around which the controversy revolves is that according to the petitioner no challenge was raised to the substantive promotion of the petitioner in the post of Head Master in Bhikhobha Patil High School whereas the learned counsel for respondent No.1 submits that the same was very much challenged before the Tribunal and the Tribunal has recorded finding in this regard in favour of respondent No.1.

5. I have perused the prayer clauses and it is crystal clear that no challenge is raised to the grant of promotion of the present petitioner on the ground that the said promotion goes to supersede respondent No.1' sclaim to the promotional post of Head Master. However inviting my attention to para 4 of memo of appeal the learned counsel for the respondent No.1 has pointed out that it is stated in memo of appeal that the appellant (respondent No.1 herein) is challenging the promotion given to Mr.Jadhav (petitioner herein) which is in supersession of the appellant. Barring this sentence in the memo of appeal and more particularly having regard to the prayer clauses there is no challenge to the promotion of the petitioner on the ground of supersession. Learned counsel for respondent No.1 has submitted that parties had understood that the challenge was also on the ground of supersession of respondent No.1. Per contra learned counsel for the petitioner submits that the petitioner always understood grievance made by respondent No.1 before Tribunal to be restricted to (i) illegality of transfer and (ii)

consequential reduction in rank. With a view to find out as to how the petitioner understood the memo of appeal it would be desirable to peruse written statement filed by respondent No.1 before the school tribunal as reflected in para 7 which reads thus:

> "7. The statement of the Appellant is that the Respondent No.2 has been joined as a party to the present appeal, because according to him, the appointment of Respondent No.2 is under challenge. However, if the prayer clause of the Appeal is seen, it reveals that the appellant has not challenged the promotion of the respondent No.2."

Thus it is clear that though on one hand the counsel for respondent No.1 submits that he had in fact challenged the grant of promotion to the present petitioner the petitioner seems to have understood the appeal so as mean that the to challenge is to the transfer and consequential reduction in rank of respondent No.1. Turning to the judgment of the School Tribunal it has rejected prayer clause (a) on the ground that the Tribunal does not have jurisdiction to entertain appeal challenging the order of transfer. The said finding is recorded by the Tribunal at the end of para 16 wherein it is observed thus:

> "In that view of the matter I have no hesitation in holding that by the 1st impugned order (transfer order) the Appellant Mr.Pawar has not been reduced in rank."

The learned counsel for the petitioner submits that once the Tribunal holds that it

cannot entertained an appeal challenging order of transfer so also recording a finding that the transfer does not result in reduction in rank the Tribunal did not have any further jurisdiction to go into the question and record final finding in favour of respondent No.1 that the promotion granted to the petitioner is in supersession of respondent No.1's claim to the promotional post. What is to be seen is that though in the memo of appeal respondent No.1 did complain of grant of promotion to the present petitioner as Head Master in Bhikhobha Patil High School no prayer in this regard was made and hence the Tribunal could not have concluded that the promotion granted to the petitioner was illegal in view of the fact that the petitioner was working in girls' school for which a separate seniority list was to be maintained according to the resolution passed by the management and hence his transfer from the girls' school to Bhikhobha Patil High School was itself impermissible. The only test to find out as to whether could the Tribunal deal with the issue in regard to supersession of the claim would be what parties had understood to be the challenge during the pendency of the appeal. Though the present petitioner has categorically stated in the written statement that there is no challenge to the promotion granted to the petitioner on the ground of supersession of claim by inviting attention of respondent No.1/appellant to the prayer clauses, the appellant has chosen not to carry out the required amendment in the prayer clauses and hence I have no doubt in my mind that the Tribunal's proceeding further with the matter and in dealing with the issue of

supersession has caused prejudice to the present petitioner for the reason that according to the petitioner he never understood the appeal so as to be one questioning the legality of the promotion.

6. In the first place the appellant did not make proper prayers and in the second place when it was pointed out by the petitioner in the written statement that perusal of the prayer clauses in the memo of appeal makes it evident that there is no challenge to the promotion of the petitioner on the ground of supersession, the respondent No.1 did not bother to amend the prayer clauses and hence the petitioner was misled that the appeal was only directed against alleged illegal transfer and consequential reduction in rank. If this be the position, the learned counsel for the petitioner is justified in contending that further finding recorded by school tribunal about promotion of the petitioner as Head Master in Bhikhobha Patil High School is unsustainable, is patently illegal and goes to result in miscarriage of justice. I am in agreement with the said submission. The petitioner cannot be made to suffer for the improper drafting of prayer clauses in memo of appeal filed by respondent No.1 and on account of latches on the part of respondent No.1 in not carrying out proper amendment when the defect was pointed out specifically in the written statement by claiming that the promotion of the petitioner is not challenged in the appeal. Though I am of the view that the judgment and order passed by the Tribunal holding that the promotion granted to the petitioner is illegal is erroneous and unsustainable,

ends of justice require, favourable consideration of oral request made by the learned counsel for the respondent that respondent No.1 be permitted to amend the memo of appeal by including necessary prayers raising the objection about illegal grant of promotion to the petitioner. Having regard to scheme of the act parties are expected to appear in person. At times matters are conducted by parties in person. The niceties of procedure cannot be permitted to defeat the cause of justice. Hence I allow oral prayer made by respondent No.1 with a view to amend memo of appeal and more particularly prayer clauses therein. Respondent No.1 shall file proper amendment before the Tribunal to which I propose to remand the matter for de novo enquiry and decision. In the result impugned order passed by the Tribunal is quashed and set aside. Matter is remanded back to the Tribunal for de novo enquiry and decision. It is made clear that the Tribunal shall permit the respondent No.1 to amend the memo of appeal in the light of observations made in this judgment. The Tribunal shall decide the appeal as expeditiously as possible and at any rate within a period of six months from today. Rule made absolute in above terms. No order as to costs.